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IN THE

Supreme Court of the United States

October Term, 1967

No. 645

JOSEPH LEE JONES and BARBARA JO JONES,
Petitioners,

v.

**ALFRED H. MAYER COMPANY, a corporation, ALFRED REALTY
COMPANY, a corporation, PADDOCK COUNTRY CLUB, INC., a
corporation, ALFRED H. MAYER, an individual, and an officer
of the above corporations,**

Respondents.

**BRIEF OF NATIONAL JEWISH ORGANIZATIONS AND
REPRESENTATIVE LOCAL JEWISH COUNCILS**

**(Affiliated with the National Community Relations
Advisory Council)**

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AMICI CURIAE

Interest of the Amici

This brief is submitted on behalf of the following national Jewish organizations:

American Jewish Committee
Jewish Labor Committee
Jewish War Veterans of the U. S. A.
National Council of Jewish Women
Union of American Hebrew Congregations
Union of Orthodox Jewish Congregations of America
United Synagogue of America

and 81 representative local Jewish councils, covering the major cities in the United States.*

* Local, State and County Agencies: Jewish Welfare Fund of Akron; Albany Jewish Community Council; Atlanta Jewish Community Council; Federation of Jewish Agencies of Atlantic County, N.J.; Baltimore Jewish Council; Jewish Community Council of Birmingham; Jewish Community Council of Metropolitan Boston; Jewish Community Council, Bridgeport, Conn.; Brooklyn Jewish Community Council; Jewish Federation of Broome County, N.Y.; Community Relations Council of Camden County, N.J.; Jewish Community Federation, Canton, Ohio; Jewish Community Relations Committee of Charleston, S.C.; Cincinnati Jewish Community Relations Committee; Jewish Community Federation, Cleveland, Ohio; United Jewish Fund and Council, Columbus, Ohio; Connecticut Jewish Community Relations Council; Jewish Community Council of Dayton; Jewish Federation of Delaware; Jewish Community Council of Metropolitan Detroit; Eastern Union County, N.J.; Jewish Community Council; Jewish Community Council of Easton and Vicinity; Jewish Community Welfare Council, Erie, Pa.; Jewish Community Council of Essex County, New Jersey; Jewish Community Council of Flint, Mich.; Jewish Federation of Fort Worth, Tex.; Community Relations Committee of the Hartford (Conn.) Jewish Federation; Jewish Community Council of Metropolitan Houston (Tex.); Indiana Jewish Community Relations Council; Indianapolis Jewish Community Relations Council; Jewish Community Council, Jacksonville, Florida; Community Relations Bureau of the Jewish Federation and Council of Greater Kansas City; Kingston, N.Y., Jewish Community Council; Jewish Community Council of Long Beach, Cal.; Community Relations Committee of the Jewish Federation Council of Greater Los Angeles; Conference of Jewish Organizations of Louisville; Jewish Community Relations Council of Memphis; Milwaukee Jewish Council; Jewish Community Relations Council of Minnesota; Nashville Jewish Community Council; Jewish Federation of New Britain, Conn.; New Haven Jewish Community Council; Jewish Community Council of Newport News, Va.; Norfolk Jewish Community Council; Jewish Community Relations Council for Alameda and Contra Costa Counties, Oakland, Calif.; Central Florida Jewish Community Council (Orlando); Jewish Federation of Palm Beach County; Jewish Community Council of Paterson, N.J.; Jewish Community Council of Peoria, Ill.; Jewish Community Council, Perth Amboy, N.J.; Jewish Community Relations Council of Greater Philadelphia; Jewish Community Relations Council, Pittsburgh; Jewish Community Council of the Plainfields, N.J.; Jewish Federation of Portland, Me.; Community Relations Committee of the Jewish Welfare Federation of Portland, Ore.; Jewish Federation of Raritan Valley, N.J.;

The organizations are affiliated with the National Community Relations Advisory Council, a coordinating body.

The organizations joining in this brief include in their membership the overwhelming majority of Americans affiliated with Jewish organizations.

Each of these organizations is concerned with preservation of the security and constitutional rights of Jews in America through preservation of the security and constitutional rights of all Americans.

They are therefore deeply concerned with the issues and outcome of this case. One of their primary purposes is to cope with racial and religious prejudice in the United States through the elimination of discrimination against racial, religious and ethnic groups comprising the American population. These organizations believe that the welfare of Jews in the United States is inseparably related to the extension of equal opportunity for all. Discrimination in housing against members of any racial, religious or ethnic group, therefore, is a threat to all groups and to the individual members thereof.

Richmond Jewish Community Council; Jewish Community Council, Rochester, N.Y.; Sacramento Jewish Community Relations Council; Jewish Community Council of St. Joseph County, Ind.; Jewish Community Relations Council of St. Louis; Community Relations Council of San Diego; San Francisco Jewish Community Relations Council; Jewish Community Council of San Jose, Cal.; Jewish Council of Savannah, Ga.; Jewish Community Council, Schenectady, N.Y.; Scranton Lackawanna Jewish Council; Jewish Federation of Springfield, Ill.; Jewish Community Council of Springfield, Mass.; Syracuse Jewish Welfare Federation; Jewish Welfare Federation of Toledo; Jewish Federation of Trenton; Tucson Jewish Community Council; Tulsa Jewish Community Council; Jewish Community Council, Utica; Jewish Community Council of Greater Washington; Jewish Federation of Waterbury; Wyoming Valley Jewish Committee, Wilkes-Barre, Pa.; Jewish Federation of Worcester, Mass.; Jewish Community Relations Council of the Jewish Federation of Youngstown, Ohio; Jewish Welfare Federation of Des Moines, Iowa.

Statement of the Case

There is no dispute concerning the essential facts in this case. The petitioners, Joseph Lee Jones and his wife, Barbara Jo Jones, sought to purchase real property in a residential development operated by the respondents. They selected a lot and offered to pay the advertised price to have a house built upon it. For the sole reason that Mr. Jones is a Negro, their offer was rejected.

The residential development in question, Paddock Woods, is a subdivision of more than one hundred projected homes which are being erected with conventional mortgage financing. No guarantees of any kind are provided either by the Federal Housing Administration or by the Veterans Administration, nor is there any other direct governmental assistance to this enterprise. The development does, however, furnish its inhabitants with such quasi-governmental services as streets, playgrounds and a garbage collection system. Moreover, it is clear that the State of Missouri, its political subdivisions, and their various agencies are involved indirectly in this residential venture to the extent that they have imposed zoning laws, building codes and licensing requirements which affect the respondents and their agents.

In substance the petitioners assert that both the Civil Rights Act of 1866 (in its present codification, 42 U.S.C. §1982) and the Fourteenth Amendment establish their right to purchase property without discrimination, and that this right is enforceable regardless of whether or not "state action" is involved. They therefore seek both damages and mandatory injunctive relief. The respondents

contend, to the contrary, that "state action" must be present for the petitioners to prevail, and that the allegations of the petitioners fail to establish the existence of this requisite.

The United States District Court for the Eastern District of Missouri dismissed the complaint for failure to state a cause of action on the ground that §1982 is subject to the strictures of the Fourteenth Amendment, which is applicable to the states but not to private citizens. The District Court ruled that there was insufficient "state action," on the facts of this case, to invoke the Fourteenth Amendment.

On appeal to the Court of Appeals for the Eighth Circuit, the decision of the lower court was affirmed. While evincing sympathy in its opinion for the cause asserted by the petitioners, the Circuit Court declared itself impelled, as an inferior tribunal, to follow the prior pronouncements of this Court which were deemed to be binding upon it. This Court has consented to hear the case.

Summary of Argument

Section 1982 of Title 42 of the United States Code provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

This provision originated in the Civil Rights Act of 1866. Subsequently it was reenacted as part of the Civil Rights Act of 1870.

The language of Section 1982 is unambiguous. If this provision is not enforceable by a citizen, then obviously it asserts a right for which there is no remedy. It thus becomes a meaningless appendage, a statute which ordinarily would be vital, but instead is a dead letter.

This brief will not address itself to the early history of Section 1982, nor to its relationship with the Thirteenth or Fourteenth Amendments, nor to the abundant case law which could be cited with reference thereto. We learn that other briefs which either have been already filed with this Court, or shall be filed shortly, will be devoted to these questions in great depth and detail.

Rather, it will be the purpose of this brief to delineate the impact of widely practiced housing discrimination today upon the American body politic, generally, and upon minority group members particularly. We will endeavor to show that this impact has been tragic and far reaching, and that judicial redress by means of Section 1982 is imperative. Since no judicial decision is rendered in a social vacuum,¹ the ugly realities of the consequences of segregated housing should be relevant to the ultimate outcome of this case.

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The brief opens with an appraisal of the impact of housing discrimination against people of the Jewish faith.

Its main thrust, however, is devoted to the consequences of housing discrimination against Negroes, which poses by

1. "Good laws are laws congruent to the needs of people in a given time and place;"—Edmund N. Cahn, Professor of Law, New York University in *The Sense of Injustice* (p. 106), New York University Press (1949).

far the more serious problem. After describing the conditions of life in the Negro ghettos, the brief confronts the relationship between segregated housing and job opportunities, the relationship between segregated housing and public school segregation and, finally, an array of other disabling effects that are produced and perpetuated by such involuntary residential isolation.

It next assesses the causes of Negro housing segregation, concluding with a determination that an effective federal open housing law is a necessity.

ARGUMENT

I

Housing Discrimination Directed Against Members of the Jewish Faith

The historical account of housing discrimination in the U.S. would not be complete unless mention, however brief, is made of the early and even contemporaneous experiences of American Jews—especially in the larger cities. Thus, since this brief is submitted in behalf of an aggregation of Jewish organizations, it is appropriate that it launch itself with a discussion of the impact of housing discrimination upon Jews. In doing so, it not only relates the American Jewish community to the complex problem of discrimination itself, but also reflects an authentic identification of members of the Jewish faith with the proliferated problems of discrimination confronting the American Negro.

Among the early restrictive covenants that ran with the land in many states and, with a few variations, were largely

complied with by those in the chain of title to that land, was one that provided as follows:

"No part of the land hereby conveyed shall ever be used, or occupied by, or sold, demised, transferred, conveyed unto, or in trust for, leased, or rented, or given, to Negroes, or any person or persons of Negro blood or extraction, or to any person of the Semitic race, blood, or origin, which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians and Syrians * * *"

In the first part of this century, and for many years thereafter until recently, housing discrimination directed against Jews was fairly commonplace. It was primarily concentrated in urban centers. In the report of a study of Jewish life in the United States, conducted by John Higham, Professor of Sociology at the University of Michigan,³ examples are offered of modes of both covenanted and uncovenanted housing discrimination:

"Already at the turn of the [20th] century a great stream of humanity was crossing from the Lower East Side of New York into Williamsburg, Greenpoint, and Brownsville. The older Brooklyn settlers took so unkindly to the newcomers that the latter established a Jewish Protective Association in 1899 to spur civil action against Jew-beating rowdies. Another sizable colony formed in Harlem. As it expanded, many a land-

2. This covenant, approximately as quaintly phrased, appeared in the famous Miller deeds in the Washington, D.C. area. *Shelley v. Kraemer*, 334 U. S. 1 (1948) rendered these covenants unenforceable, but held they might be complied with by the parties voluntarily.

3. "Social Discrimination Against Jews, 1830-1930" (Publication of the American Jewish Historical Society), Vol. XLVII, No. 1 (September, 1957).

lord in the area hung out a "to-let" sign bearing the warning "No Jews."

"During the 1900's, also, Boston Jewry broke out of the tenement districts around the harbor and pressed southward, with consequences much the same. As the migration descended upon the middle-class suburbs of Dorchester and Roxbury, home-owners either fled or resorted to restrictive covenants. In Roxbury a mass meeting of Jews demanded more adequate police protection against hooligans. Real estate agents in both areas refused to rent apartments to Jews; and often their neighbors' unpleasant behavior forced Jews to vacate newly acquired homes."

It is a melancholy fact that yesterday's housing discrimination against Jews, while by no means the grievous problem on a mass scale comparable to that to which non-whites are exposed, still exists throughout the country. Numerous pockets of residential communities yet will not accept Jews as owners or lessees of real property. While in the most general terms Jews are now, after generations of systematic exclusion, free to live almost anywhere their economic status permits, and it is rare to find a Jew whose life situation is presently irreparably damaged solely because of dwelling exclusion, nevertheless the American Jew must indeed feel deeply aggrieved by such examples of rejection as yet persist, a rejection that represents a genuine affront to his sense of personal dignity. While it no longer serves to imprison him, as often it once did, in an intolerable residential predicament, to the extent that Jews are still barred from living wherever they choose, as members of other religious groups may, the very act of exclusion serves as a means of humiliation, imposed only because of a particular religious affiliation.

This may occur in places as widely disparate as Delray Beach, Fla.⁴ and Bronxville, N.Y., or in a number of suburban areas of the District of Columbia, or in respect of an application to purchase a cooperative apartment in certain sections in New York City.⁵ Such practices, still stubbornly pursued, must be noted as bearing upon the problem to which we address ourselves; they symbolize the still existing remnants of an earlier era in this country's history which now and again mirror its chronic, collective inhospitality to certain racial, religious and ethnic groups.⁶

The frequently absurd examples of residential discrimination against Jews perhaps have never been more graphically illustrated than by the disclosure in the press⁷ of the "point" system which, as recently as 1960, was being used to screen prospective residential purchasers in Grosse Point, Michigan, once described as "the boudoir of Detroit." Each would-be buyer in that community was graded by means of a questionnaire, conceived by the local realty board, which was completed by a private detective. Out of a maximum possible arbitrary 100 points, a Jew, to qualify for residential admission to the community, was required (by means of a quaint system of scoring) to score 85. A

4. Statement of Eugene L. Sugarman, Chairman, New York Regional Advisory Board, Anti-Defamation League of B'nai B'rith to U. S. Commission on Civil Rights, February 3, 1959, New York, N. Y., 411. (U. S. Government Printing Office, Washington: 1959.)

5. Statement of Irving M. Engel, President, American Jewish Committee to U. S. Commission on Civil Rights, February 3, 1959, New York, N. Y., 395, 396 and 402. (U. S. Government Printing Office, Washington: 1959.)

6. *Viz.*, The national origins quota system enacted as part of the McCarran-Walter Immigration Act, 8 U.S.C.A. §1101 *et seq.* (1952).

7. *The New York Times*, April 20, 1960.

person of southern European extraction, however, could pass with 75, and a Pole with but 55 points. Negroes and Orientals were not eligible to take the test.⁸

The grading scheme contained a number of other bizarre features. A Jew with an Anglo-Saxon name, for example, would receive two points, whereas a classic Jewish name was worth zero. Indeed, a special "Blue Form" was introduced explicitly for the purpose of evaluating Jewish applicants, allowing only three points for a Jew who dressed conservatively, though a non-Jew would be awarded four points for the same sartorial attribute. A local Congregational minister wryly observed that Jesus Christ, a carpenter of "swarthy" complexion (swarthiness too being deemed undesirable), "would have failed the test."⁹

The whole process would have been simply ludicrous, had it not been so odious.¹⁰ It has since been discontinued, as a result of governmental agency pressure.

8. *Time Magazine* (April 25, 1960) in an item entitled "Grosse Pointe's Gross Points" commented: "What makes neighboring Detroiters smile about the carefully protected Grosse Pointe exclusivity is that the area's permanent, well-established residents somehow included such noted Detroit gangsters as Mathew Rubino (20 arrests), Peter Licavoli (24), and John Priziola (17).

9. *Rights*, September, 1960 (Report by Anti-Defamation League of B'nai B'rith, on discrimination).

10. One illustration of how the system operated in practice was furnished by a letter received by the Attorney General of Michigan which read, in part, as follows:

"My dealings were with Mrs. Irene Bledsoe and Mr. De Santis of Johnstone & Johnstone, Grosse Pointe. When I asked to make a bid on a house, I was told by Mr. De Santis that I must await being passed by the Grosse Pointe Property Owners Association. This took several weeks, I was told then by Mrs. Bledsoe that I could not buy or even look at a house in Grosse Pointe because I was Jewish and could not qualify. I will not

Since the common forms of overt anti-Semitism appear to be somewhat out of fashion, such discriminations as are yet manifested against Jewish applicants for living accommodations frequently are devious. The resultant pattern which has emerged has been described as follows:

"The Jewish home seeker will frequently find the real estate agent to be amazingly without homes to show him. Sometimes a real estate agent will go beyond this by telling the Jew that he doesn't think he will be 'comfortable' in the area, explaining that there are no Jews living in the vicinity, no temples or synagogues in the immediate vicinity, or that the people in the area are unfriendly towards Jews. He will recount the many experiences he has had where Jews disregarded his advice and had to put their newly purchased home on the market again because of the hostility and social ostracism they experienced. If the Jewish home seeker

belabor the point with needless detail, but I think some details of personal biography might be of interest in the light of my being disqualified.

"First of all, I am half Jewish and my wife is not Jewish at all. It was told by Mr. De Santis, incidentally, that she qualified and could move to Grosse Pointe. I forgot to ask them about my two-year-old son. We are all native born citizens, light complexioned and without accent. My wife is a scholarship alumna of Cranbrook Academy. The half lineage which is not Jewish in myself is from my mother. She is a Braxton. She is a direct descendant of Carter Braxton who signed the Declaration of Independence. I was raised in Detroit and am a *cum laude* graduate of Wayne University. I am the inventor of the artificial electrical heart and have contributed this invention without recompense to the community. I am a member of Sigma Xi, the national honorary research society. I am the author of many scientific articles in Medicine and am honored to be the recipient of four national medical awards. I am Instructor at Wayne State University College of Medicine for which I accept no salary * * * I hope my personal experience can be of some use to you * * * I could go on but I think my point is clear * * *

Sincerely,

Jean Braxton Rosenbaum, M.D."

persists, the home for sale will unaccountably be withdrawn from the market, or, he will then be told flatly that with respect to the home, the owner has issued express instructions not to sell to Jews.”¹¹

Although the thrust of housing discrimination directed against Jews is certainly not a problem of the gravity which has confronted Negroes, it has nevertheless served as the central component of a design of economic, political and social discrimination which, as a totality, seeks to impose upon Jews a not-too-subtle badge of rejection and inferiority, i.e., the inscription on the badge seems to read: it is obviously more advantageous to be Christian than Jewish.

II

Effect of Housing Discrimination Upon Negroes

Nearly every ancient restrictive covenant or other modern device directed at Jews as targets of bigotry has included the Negro as an intended fellow-victim. But whereas housing discrimination against Jews presently embodies social insult rather than enduringly critical injury, with respect to Negroes the damage has been infinitely worse; it is beyond comparison!

It is difficult to characterize adequately the conditions which prevail in urban Negro ghettos without seeming to resort to hyperbole. The stark truth is that, where housing is concerned, most Negroes in America today are compelled to reside in *de facto* concentration enclaves, with no escape in prospect. The civil disorders which have ravaged our cities in recent years convey their own frightful message.

11. "Housing Barriers Against Jews," A. Abbott Rosen, *New City*, August 1, 1963 (Catholic Council on Working Life).

Since massive disturbances of this nature do not ordinarily occur, absent profound social grievances, these disorders establish a clear and compelling case of *res ipsa loquitur*. To the extent that words spontaneously uttered may nonetheless be helpful, ghetto inhabitants have described their own plight simply, yet perhaps more eloquently than is otherwise possible:

"When they have to get out on the street at 14 or 15 they consider themselves to be a man and are going to take on some responsibility because he is the only man in the house and he has little brothers and sisters going hungry, half starving and trying to get the rent in. It is a bare house, like it is a cold feeling even to be there and you have to go out on the street and become the subject of the same thing out there. There has to be a breaking point."¹²

A Negro woman from a slum in Gary, Indiana, Mrs. Jacqueline Taylor, expressed her feelings about her life in this manner:

"I mean outside of this district time marches on. * * * They build better and they have better but you come down here and you see the same thing year after year after year. People struggling, people wanting, people needing, and nobody to give anyone help."¹³

In response to a question as to what she would do if she had sufficient income, another resident of the same city, Mrs. Charlotte Gordon, replied:

12. Hearing before the U. S. Commission on Civil Rights, San Francisco, Calif., May 1-3, 1967, and Oakland, Calif., May 4-6, 1967, p. 284. (U. S. Government Printing Office, Washington: 1967.)

13. Proceedings before the Indiana State Advisory Committee to the U. S. Commission on Civil Rights in Gary, Ind., Feb. 8, 1966, p. 42. (U. S. Government Printing Office, Washington: 1966.)

"The first thing I would do myself is to move out of the neighborhood. I feel the entire neighborhood is more or less a trap. If you check back and check the people on welfare now, nine times out of ten they are people that have been on welfare before. * * *"¹⁴

Mrs. Rowena Stewart, who lives in the South End of Boston, commented graphically on the housing situation in her neighborhood:

"A person rents a broken-down room for \$21 to \$24 a week that is rat infested and has cockroaches running all over the place. There are holes in the ceiling where the plaster has fallen down and the people have to share a bathroom. The so-called furnished apartments usually contain a few chairs, a table and an old rusty bed. * * * Frequently, social workers tell families to move out of these homes where the rents are too high, but they never find them decent homes where rents are lower."¹⁵

The problem of rats in the Hough area of Cleveland was described by one of its residents, Mrs. Hattie Mae Dugan:

"I was living in one apartment, the rats got in bed with me, and my sister is still living in the same building and the rats are jumping up and down. The kids, they play with rats like a child would play with a dog or something. They chase them around the house and things like this."¹⁶

The inventory of the hideous conditions and of the concomitant anguish and despair in the Negro ghettos is

14. *Ibid.* at 29.

15. *The Voice of the Ghetto, Report on Two Boston Neighborhood Meetings* p. 16. (Massachusetts State Advisory Committee to the U. S. Commission on Civil Rights, Boston, Mass.: 1967.)

16. *Hearings Before the U. S. Commission on Civil Rights, Cleveland, Ohio, April 1-7, 1966*, p. 25. (U. S. Government Printing Office, Washington: 1966.)

seemingly endless. But what happens when a Negro attempts to emerge from the ghetto into a more physically congenial neighborhood? The experience of a Negro journalist is illuminating:

"I remember—more vividly sometimes than I wish—my family's experiences as the single Negro family on an otherwise all-white street in a Southwest Atlanta neighborhood. I remember the first night—the sound of gunshots fired above the house, the sight of cherry bombs and Molotov cocktails tossed on the lawn. I remember returning home with my wife and two children after a short trip to the city to find windows broken and streams of toilet paper decorating the front yard. I remember the sight of my trembling teenage daughter telling her mother and me of an attempt by a white teenage motorist to run her down as she walked along the road from school. I remember the words of my six-year-old son telling us of being chased by larger white boys. 'I wish I was white so they wouldn't do it.' It is not possible to erase such memories.

"When I first sought a home in Atlanta in the summer of 1965, I talked by telephone with white real estate agents, sometimes asking them about specific houses I knew were vacant. Not knowing they were talking to a Negro, some of the agents advised me against considering homes in certain so-called 'fringe' areas because, as they put it, 'the niggers have started moving in there.' After seeing me, these realtors would either refer me to Negro real estate firms or to white firms which sold and rented property in Negro areas. Often white agents candidly told me that they did not handle property for Negroes.

"The role of white realtors in promoting segregated housing is thus easily seen. The part Negro realtors play is less obvious perhaps because they are victims of the system perpetuated by whites. One Negro realtor

interviewed in connection with this article said that when a group of whites attempting to maintain racial balance in their neighborhood asked him to cooperate by discouraging further Negro purchases in the area, he refused because he believes in open occupancy. But in the absence of a federal open occupancy law permitting Negroes to live wherever their financial resources permit and thus discouraging the migration of race-conscious whites seeking lily-white neighborhoods, the practical result of his refusal will be to help bring about total transition of the neighborhood, in other words, to perpetuate segregation."¹⁷

In this connection, the respondent, Alfred H. Mayer, is quoted as having commented to a reporter for the *St. Louis Globe-Democrat* last October that "the sooner an open housing policy is everywhere, the better."¹⁸ His rationale, apparently, was that it was difficult for one developer not to discriminate against Negroes so long as other local developers discriminated, because of the need to remain successfully competitive.

In cities throughout the North there has been a continuing influx of rural Negroes from the South, and a simultaneous flight of urban northern whites to the suburbs surrounding the inner cities. As Negroes move into a city neighborhood, whites move out.¹⁹ This process, in itself, would be damaging enough to the prospect for an

17. "Blueprint for Segregation: A Survey of Atlanta Housing," S. L. Adams, *New South*, Spring, 1967 (Southern Regional Council, Atlanta, Ga.).

18. *The National Observer*, December 4, 1967.

19. "An American Dilemma" (Twentieth Anniversary Edition), p. 263, Dr. Gunnar Myrdal, Professor of International Economy, University of Stockholm, Harper & Row (1962). See also: "The White Exodus to Suburbia Steps Up," by Herbert J. Gans, a sociologist on the faculty of Teachers College, Columbia University, *New York Times Magazine*, January 7, 1968, p. 25.

integrated society.²⁰ But it is markedly exacerbated by the behavior of real estate brokers who affirmatively foster neighborhood segregation.²¹ Charles Abrams, a nationally known housing authority, in his book entitled "Forbidden Neighbors," listed thirteen different methods whereby realty groups have endeavored to perpetuate discrimination, subsequent to and designed to evade the implications of the decision of this Court in *Shelley v. Kraemer, supra*.²²

It has been suggested that the behavior of the real estate fraternity, in restricting the sale or rental of property on the basis of race and religion, constitutes a conspiracy to restrain trade in violation of the U.S. anti-trust laws.²³ Indeed, Recommendation 6 of the Report by the U. S. Commission on Civil Rights, in 1962, urged that the President request the Department of Justice to investigate whether such anti-trust violation was actually occurring in the Washington metropolitan area.²⁴

20. "The middle-class Negro is frequently the most bitter Negro, deep down, because he realizes that, even after he's made it economically, he's still a 'nigger' to many whites," says Robert Tindal of the NAACP. "He thought that if he cut his lawn, kept his garbage off the street and didn't argue too loudly with his wife, he'd be accepted; but still he finds the whites leaving the neighborhood." "Postscript on Detroit—'Whitey Hasn't Got the Message'", by J. Anthony Lukas, *New York Times Magazine*, August 27, 1967, p. 53.

21. See "Apartheid American Style," pp. 43-50, by John H. Denton, Diablo Press (1967), for the section entitled "How Does Organized Real Estate Help to Maintain Segregated Housing?"

22. Harper and Row, Inc. (1955). Another popular restrictive device, the gentlemen's agreement, was the subject of a successful novel of the same name by Laura Z. Hobson, Simon and Schuster (1947).

23. Statement on Discrimination in Housing to U. S. Commission on Civil Rights by Irving M. Engel, Honorary President of the American Jewish Committee, April 12, 1962, p. 66. (U. S. Government Printing Office, Washington: 1962.)

24. "Civil Rights U.S.A., Housing in Washington, D. C.," p. 37, U. S. Commission on Civil Rights (U. S. Government Printing Office, Washington: 1962).

A. Housing Discrimination and Jobs

The confinement of Negro workers within racial ghettos is a critical factor in the disproportionately high incidence of Negro unemployment. In an address before a conference in New York City on June 29, 1965, Franklin D. Roosevelt, Jr., then Chairman of the Equal Employment Opportunity Commission, observed:

"There are many examples to illustrate what a serious obstacle housing segregation is to employment opportunities. This is particularly true during this period when many major industries are decentralizing, moving plants or establishing branch operation in outlying and suburban areas at the same time they are actively re-eruiting Negro employees. Indeed, thousands of Negroes are losing jobs because they are denied living quarters in or near the new communities in which their employers are relocating their plants."²⁵

Illustrative of one of the more crucial and inevitable economic consequences of housing discrimination, namely, inaccessibility of the ghetto dweller to equal occupational opportunities, is the situation in Oakland, California (in Alameda County). Oakland has a Negro population of 120,000 out of a total of 385,000. The over-all Negro unemployment rate in Oakland during the past year was 23%, while for Negro teenagers it was 41%. Yet in the suburban areas of Alameda County, where few Negroes live, there are approximately 185,000 jobs at all levels of skill, of which only 3,700 are held by Negroes. Some jobs are always open; but public transportation from Oakland to the

25. "Affirmative Action to Achieve Integration," p. 22 (National Committee Against Discrimination in Housing, New York, N. Y.: 1966).

outlying areas of the county is limited and costly, and relatively few Negroes in the Oakland slums are economically able to afford car ownership.²⁶

Lyle Schaller, a city planner in Cleveland, testified before the U. S. Commission on Civil Rights as to the employment picture in the Cleveland area in 1966:

"Most of the employment opportunities opening up are in the suburban communities, many of them in the southern and western part of the counties are quite some distance from where the Negro population lives.

"* * * It raises a problem in terms of simply knowing about the jobs being advertised, of getting there before the job is filled, and this kind of thing [*sic*], plus the problem of transportation which is a serious problem for many Negro families."²⁷

The January, 1968 issue of *Fortune* is devoted exclusively to "Business and the Urban Crisis." In an appraisal of the poverty and race factors in the proliferating economic problems of St. Louis, Missouri, it is observed:

"A continuing substitution of white-collar for blue-collar jobs does not promise any great widening of employment opportunities for North Side people. And their poverty hobbles the city. * * * Many people who have thought about the matter, in St. Louis and elsewhere, would agree in a general way with the view expressed by Father Lucius Cervantes, a Jesuit soci-

26. Hearing before the U. S. Commission on Civil Rights, San Francisco, Calif., May 1-3, 1967, and Oakland, Calif., May 4-6, 1967, pp. 16 and 558. (U. S. Government Printing Office, Washington: 1967.)

27. Hearing before the U. S. Commission on Civil Rights, Cleveland, Ohio, April 1-7, 1966. p. 102. (U. S. Government Printing Office, Washington: 1966.)

ologist and brother of St. Louis' present mayor. 'The answer,' he says, 'is to disperse the ghetto. Jobs are in a ring around the city. Allow the poor to follow the jobs.' * * * If a cross-migration could come about, with some middle-class whites moving back to the cities they work in and some Negroes moving out to the suburbs to live and work, it would be possible to discern a less clouded future for St. Louis. * * * But nothing like this can be expected, on a scale large enough to matter, without some new political arrangements. The power of the city stops at that 1876 boundary, and the county beyond wants nothing less than an inflow of Negroes from the city. Some overarching authority would be required to open up the suburbs to large numbers of Negroes—perhaps some kind of metropolitan government imposed, or at least fostered, by state intervention. It is not a good bet that effective new arrangements will emerge any time soon. Yet unless things move in that direction, it is hard to see any future for St. Louis—and by inference many other U. S. cities—except deepening economic blues.”²⁸

In sum, there is ample evidence to confirm the correlation between Negro housing segregation in the core cities, and the inability of Negroes to hold jobs in suburban areas which, in effect, are closed to them as places of habitation.

28. "The St. Louis Economic Blues," William S. Rukeyser, *Fortune*, January, 1968, p. 212.

B. Housing Discrimination and School Segregation

"Segregated schools perpetuate feelings of inferiority in Negro children and unrealistic feelings of superiority in white children. They debase and distort human beings. They impair the ability of children to profit from democratic education. Indeed, they make it practically impossible to educate children in the ideals of democracy. Before the schools of America can play an effective rôle in improving the levels of our democracy—before they can prepare children for life in terms broader than mere academic subject matter—the system of segregated schools must be eliminated."²⁹

In the landmark case of *Brown v. Board of Education*, 347 U. S. 483 (1954), this Court ruled that legally enforced racial segregation in public schools violates the equal protection clause of the Fourteenth Amendment. This Court took judicial notice of the harm done inevitably to Negro children by maintenance of segregated schools. There was no implication in that opinion, however, that segregated schools are detrimental to Negro children only when the segregation is imposed by the state. In fact, the opinion (at 494) cited with approval a finding by a Kansas court that the "impact is *greater* when it has the sanction of the law;" (italics added), thus clearly implying that there is an impact in any event. Since most children in northern cities attend neighborhood schools, and since most residential neighborhoods are racially structured, it is scarcely

29. "Prejudice and Your Child," Dr. Kenneth B. Clark, then Associate Professor of Psychology, City College of New York, Beacon Press (1955), p. 87. The monograph upon which this book was based was titled "Effect of Prejudice and Discrimination on Personality Development" and was cited in footnote 11 in *Brown*, *supra*, at 494.

surprising that eliminating *de facto* school segregation would be surpassingly difficult, unless housing patterns are radically altered:

"Indeed, discrimination and segregation in housing are clearly at the root of the whole syndrome of racism involved in the civil rights struggle. Effective and permanent success in the elimination of any single facet of the total civil rights problem is improbable so long as discrimination persists in housing; and this inter-relationship is perhaps most demonstrable in respect to schools. It is clear that housing desegregation is critical to successful widespread desegregation of schools in large urban centers."³⁰

C. Other Consequences of Housing Discrimination

(1) Psychological and Social

When racial or ethnic factors, in effect, confine people to a particular residential enclave, the total quality of their lives is affected thereby. Not merely in schools and jobs, but also in churches, hospitals, restaurants and bars, recreational and civic activities, their associations are apt to be restricted to those of their own group. Their interests thus are directed narrowly inward, rather than toward the larger society outside. To the extent that the cultural and social lives of people flourish as a result of a spontaneous sharing of ideas, attitudes, values and styles of life, ghetto inhabitants to the contrary are stunted in their development as human beings by the very fact of their involuntary isolation.³¹

30. Address by Robert L. Carter, General Counsel, NAACP, Housing Conference, New York, June 29, 1965, as reported in "Affirmative Action to Achieve Integration", p. 28 (National Committee Against Discrimination in Housing, New York, N. Y.: 1966).

31. "Where Shall We Live?"—Report of the Commission on Race and Housing, pp. 35-37 (University of California Press, 1958).

The psychological consequences of enforced residential segregation have been depicted in the following terms:

"Psychologists are generally agreed that compulsory segregation has harmful psychological effects on the segregated groups. Arbitrary interference with an individual's pursuit of what he considers, and is socially encouraged to consider, a legitimate goal (such as better housing) produces feelings of frustration, hopelessness, and hostility. When minority families are prevented from moving into better homes and neighborhoods as their incomes rise, a normal incentive to self-improvement is taken away. They become habituated to a low standard of housing, and their aspirations for something better are curtailed.

"As an unceasing reminder of inferior status, segregation and the discrimination that goes with it are damaging to the personality development of minority children. Many, particularly adolescents, develop feelings of inferiority and doubts of their personal worth, and they fail to develop strong motivations to achievement.

"Disorganization of family life, common among Negroes of the lower class, results from a historical complex of factors of which housing conditions are only one. However, one of the consequences of segregation has been to compel many Negro families to occupy quarters poorly adapted to family needs. The crowded conditions in many Negro households and the lack of suitable space and facilities for family living have unquestionably contributed to the instability of Negro family ties."³²

But the psychological damage wrought by segregated housing is by no means limited to Negroes, although surely they are its chief immediate victims. The nation as a whole

32. *Ibid.*, p. 38.

already has paid a terrible moral price for ghettoization in terms of widespread interracial fear and hatred, in the considerable antipathy to America among the non-white peoples who constitute a majority of the world population, and in the inescapably corrosive psychological impact on everyone when a major segment of the community suffers visibly from high rates of physical and mental disease, family breakdown, crime and delinquency.³³

(2) *Crime and Delinquency*

Among the domestic concerns of the American people today, the rising crime rate throughout the country perhaps is preeminent. While the problem is exceedingly complex, and no single causative factor may be used to explain criminality, the link between poverty and lawbreaking has been quite conclusively established:

"One of the most fully documented facts about crime is that the common serious crimes that worry people most—murder, forcible rape, robbery, aggravated assault, and burglary—happen most often in the slums of large cities. Study after study in city after city in all regions of the country have traced the variations in the rates for these crimes. The results, with monotonous regularity, show that the offenses, the victims, and the offenders are found most frequently in the poorest, and most deteriorated and socially disorganized areas of cities. * * * Burglary, robbery, and serious assaults occur in areas characterized by low income, physical deterioration, dependency, racial and ethnic concentrations, broken homes, working mothers, low levels of education and vocational skill, high un-

33. "Emotional Aspects of School Desegregation—A Report by Psychiatrists," pp. 8-9 (Group for the Advancement of Psychiatry, New York, N.Y.: 1960).

employment, high proportions of single males, overcrowded and substandard housing, high rates of tuberculosis and infant mortality, low rates of home ownership or single family dwellings, mixed land use, and high population density. Studies that have mapped the relationship of these factors and crime have found them following the same pattern from one area of the city to another.”³⁴

* * *

“Delinquents tend to come from backgrounds of social and economic deprivation. Their families tend to have lower than average incomes and social status. But perhaps more important than the individual family’s situation is the area in which a youth lives. * * * Thus Negroes, who live in disproportionate numbers in slum neighborhoods, account for a disproportionate number of arrests. Numerous studies indicate that what matters is where in the city one is growing up, not religion or nationality or race. * * * But for Negroes, movement out of the inner city and absorption into America’s middle class have been much slower and more difficult than for any other ethnic or racial group. Their attempts to move spatially, socially, economically have met much stiffer resistance. Rigid barriers of residential segregation have prevented them from moving to better neighborhoods as their desire and capacity to do so have developed, leading to great population density and to stifling overcrowding of housing, schools, recreation areas. Restricted access to jobs and limited upward mobility in those jobs that are available have slowed economic advance.”³⁵

34. “The Challenge of Crime in a Free Society”—A report by the President’s Commission on Law Enforcement and Administration of Justice, p. 35. (U. S. Government Printing Office, Washington: 1967).

35. *Ibid.*, p. 57.

(3) *Uninsurability of Ghetto Property*

Among the numerous plaguing consequences of ghettoization is the inability of the residents and property owners in ghettos to secure fire and burglary insurance. This has always been so; " * * * the search for ways to make insurance available in ghetto areas represents a new phase of an old insurance problem." *Business Week* (September 9, 1967) p. 120. Understandably, the persistence of this problem serves also as a powerful deterrent to new business investments urgently needed in such areas.

The President's Commission on Civil Disorders has recognized that this problem was exacerbated by the civil disturbances that took place in predominantly segregated Negro areas in a dozen or more cities during the summers of 1965, 1966 and 1967. This has to do with the reluctance of the insurance industry to cooperate with a voluntary plan designed to provide new fire and burglary insurance for property owners, tenants, and merchants in those slum and ghetto areas.

Hearings have been held under the auspices of the President's Commission by an Advisory Panel on Insurance in riot-affected areas, whose chairman is Gov. Richard J. Hughes of New Jersey.

The result of the failure or refusal, so far, of insurance companies to issue fire and burglary policies has caused a still further significant deterioration in Negro ghettos, especially in those areas which have been called "riot-prone." Negro homeowners and tenants, as well as merchants—Negro and white—are the principal sufferers.³⁶

36. *Wall Street Journal*—July 28, 1967; *New York Times*, November 25, 1967.

III

Causes of Negro Segregation in Housing

"Access of the Negro to decent housing is becoming the vortex around which his other rights revolve. Without housing in areas of his choice, the right of his child to an unsegregated school is meaningless; his right to a job will be impaired; his right to move and to secure shelter in a decent neighborhood will be an empty shell."³⁷

There is little disagreement concerning the prevalence of residential segregation based on race; there is considerable disagreement as to its derivation. One widely held opinion is that most Negroes prefer to live separately from whites. Another view is that the crucial determinant in the choice of a place to live is an economic one. Still others believe that purposeful discrimination by whites against Negroes is the paramount factor in housing segregation, suffocating the Negro, and throttling the development of an open society.

An impressively documented article in *Scientific American* (August, 1965), by Karl E. Taeuber, Associate Professor of Sociology at the University of Wisconsin, weighed and analyzed statistically the merits of the latter two divergent points of view. Using a "segregation index," which was applied to 207 cities in the United States, the author concluded that by far the primary cause of racial division in housing was intentional discrimination by whites.

37. "The Housing Problem and the Negro," Charles Abrams, Chairman, Department of Urban Planning, School of Architecture, Columbia University, *Daedalus*, Winter, 1966, p. 72 (Journal of the American Academy of Arts and Sciences).

With regard to the frequently articulated allegation that most Negroes "voluntarily" cluster together as a matter of personal predilection, Dr. Taeuber stated that the available evidence appears to negate this interpretation. In our society, he asserts, prejudice and discrimination are so manifestly deep and pervasive that "freedom of choice" by Negroes is an illusion. One illustration of this is the almost invariably hostile reception accorded any Negro family which dares move into an all-white neighborhood, nearly anywhere in the country (i.e., one of the most flagrant examples: Cicero, Illinois).³⁸

As for economic status motivating segregation, Dr. Taeuber's analysis indicated that it is far less significant than many have supposed:

"There is an even simpler demonstration of the inadequacy of the poverty explanation for residential segregation. The crucial assumption that white and Negro families at the same income level are not residentially segregated is patently false. In no city do high-income Negroes live randomly scattered in the same neighborhoods as high-income whites. In no city do low-income Negroes live in the same neighborhoods as the majority of low-income whites. Regardless of income, most Negroes live in Negro neighborhoods and most whites live in white neighborhoods. * * * Neither free choice nor poverty is a sufficient explanation for the universally high degree of segregation in American cities. Discrimination is the principal cause of Negro residential segregation, and there is no basis for anticipating major changes in the segregated character of American cities until patterns of housing discrimination can be altered." (p. 9)

38. *New York Times*, July 13, 1951.

IV

An Enforceable Federal Open Occupancy Law Already Exists

In considering Section 1982 as presently satisfying the requirements of a federal statute proscribing discrimination in private housing, we have paid heed to the contention, hitherto made frequently, that Congress has no constitutional authority to enact such legislation. We contend that any doubt on that score is no longer tenable, since it is by now clear, under decisions of this Court during the last 30 years, that under the Commerce Clause of the Constitution, Congress possesses such plenary power (*Wickard v. Filburn*, 317 U. S. 111 (1942); *Katzenbach v. McClung*, 379 U. S. 294 (1964). In *Heart of Atlanta Motel, Inc. v. U. S.*, 379 U. S. 241 (1964), at 257, this Court was concerned with whether Congress was limited to the promotion of commerce or even to the mere avoidance of interference with commerce. This Court found that such limitation was not necessary: "That Congress was legislating against moral wrongs in many of these areas rendered its enactment no less valid."

It must just as forcibly be true that Congress may enact fair housing legislation in pursuance of its power under Section 5 of the Fourteenth Amendment, which provides that: "Congress shall have power to enforce by appropriate legislation the provisions of this article." This Section, interpreted more broadly than was done in the *Civil Rights Cases*, 109 U. S. 3, should be interpreted as conferring upon the Congress all power necessary to achieve the basic purpose of the Fourteenth Amendment, namely, to end inequality based on race.

Except for thus indicating the relevancy of this view of Section 5 to the comments that follow, we will not extend our argument in support of its applicability to the facts in this case, because the briefs of the petitioners and the other *amici* will, we understand, argue this point at greater length.

Twenty-two states thus far have enacted open occupancy statutes, with varying degrees of comprehensiveness. Yet, since laws are not self-executing, it is apparent that they have not resolved the problem of housing discrimination in those states. They have helped to some extent, but aggressive enforcement of these laws has been impeded by stubborn resistance to integration (i.e., the Proposition 13 case in California³⁹). Such legislation simply does not, as yet, command the allegiance of a clear majority of white citizens who, unhappily, do not fully appreciate the enormity of the housing segregation problem. Wherever fair housing laws are submitted for approval to the electorate by means of referenda, the common experience has been that they are rejected.⁴⁰ The harsh truth is that many elements in this nation, almost from its very founding, have nurtured a society with walls of separation in countless places between the dominant whites and the subservient non-whites (Indians, Negroes, etc.). The American dream has been sharply at variance with the American reality. The situation in housing today clearly reflects this tragic history of Negro deprivation, even as it serves to perpetuate and to compound it.

39. *Reitman v. Mulkey*, 387 U. S. 369 (1967).

40. "Fair Housing Statutes and Ordinances" (a compilation published by National Committee Against Discrimination in Housing, New York, N. Y.: June, 1966).

The Constitution of the United States, however, is not necessarily, nor perhaps even essentially, a majoritarian instrument. In the eyes of many, its peculiar genius lies in the sturdy protection afforded by it to minority rights which may be traduced by majority encroachment. This Court has in the past been sensitive to numerous threatened denials of basic human rights such as religious liberty.⁴¹ We submit that the right to live where one chooses, within the limits of economic capability, regardless of the inhospitality of others (who enjoy the collateral right to move should they so choose), is a right equally worthy of protection by this Court.

This much is clear: a federal open occupancy law, such as is already provided by Section 1982, will be no panacea. The implementation of such a law, however, for its moral and educational value alone, would constitute a giant step forward along the road to the professed American goal of "liberty and justice for all." Moreover, the mere fact that certain of the state statutes have received rather sluggish enforcement does not mean that the federal government need follow suit. Vigorous leadership and affirmative action to insure compliance with a national open occupancy law could well trigger a positive response throughout the country in favor of open housing for all. Some people who are opposed to a fair housing ordinance solely in their own community, fearing an island of open occupancy in a sea of exclusion, may feel quite differently were open occupancy to become the general rule rather than the exception:

41. *West Virginia Board of Education v. Barnette*, 319 U. S. 624 (1943); *Torcaso v. Watkins*, 367 U. S. 488 (1961); *Abington School District v. Schempp*, 374 U. S. 203 (1963); *Sherbert v. Verner*, 374 U. S. 398 (1963).

‘It is important to remember too, that if there were a free housing market for Negroes in the United States today there would be no reason to fear wholesale invasion. Negroes represent less than five per cent of the total population in the North today. If they were not restricted in the choice of their homes to a few ghetto areas, they could easily disperse throughout the country and there would be little reason to fear that they might inundate any single community.’⁴²

In very large measure, attitude changes derive simply from what people have become exposed or accustomed to; our fair employment practices laws demonstrate that truism. It is time, then, to accustom the American people to integrated housing, and the statute to accomplish this objective is already part of the federal law (§1982). Only its activation yet remains to be achieved.

Conclusion

The decision of the Court below should be reversed.

Respectfully submitted,

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42. *The Myths of Racial Integration*, Naomi Levine (American Jewish Congress, New York, N. Y.: 1960).